

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JEFFREY A. ABLES,

Petitioner,

v.

**CASE NO. 2:11-CV-00124
CRIM. NO. 2:09-CR-273
JUDGE SMITH
MAGISTRATE JUDGE KING**

UNITED STATES OF AMERICA,

Respondent.

ORDER

On October 30, 2012, the Magistrate Judge recommended that counsel be appointed to represent Petitioner at an evidentiary hearing on his claim that he was denied the effective assistance of counsel because his attorney failed to file an appeal or to consult with him regarding the filing of an appeal, but that the remainder of Petitioner's habeas corpus claims be dismissed. *Report and Recommendation*, Doc. No. 53. Petitioner objects to the extent that the Magistrate Judge recommended dismissal of his claim that he was denied the effective assistance of counsel because his attorney failed to challenge a search warrant and the search of Petitioner's room. For the reasons that follow, Petitioner's *Objections*, Doc. No. 57, are **OVERRULED**.

Petitioner again argues that law enforcement personnel acted unlawfully when they searched his room, which was located in a residence the search of which was authorized by a search warrant, without first obtaining a separate warrant or Petitioner's consent. Petitioner contends that he had a reasonable expectation of privacy in the room and in the information stored on the computer found in his room.

For the reasons already detailed in the Magistrate Judge's *Report and Recommendation*, this Court agrees that Petitioner cannot establish that he was denied the effective assistance of counsel under the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), based on his attorney's failure to file a motion to suppress evidence seized from Petitioner's room.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. Petitioner's *Objection*, Doc. No. 57, is **DENIED**. The *Report and Recommendation*, Doc. No. 53, is **ADOPTED** and **AFFIRMED**. Petitioner's motion for an evidentiary hearing, Doc. No. 51, is **GRANTED** in connection with Petitioner's claim that he was denied the effective assistance of counsel because his attorney failed to file an appeal or to consult with him regarding the filing of an appeal. It is further **ORDERED** that counsel shall be appointed to represent petitioner at that evidentiary hearing.

The remainder of Petitioner's claims are **DISMISSED**.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT